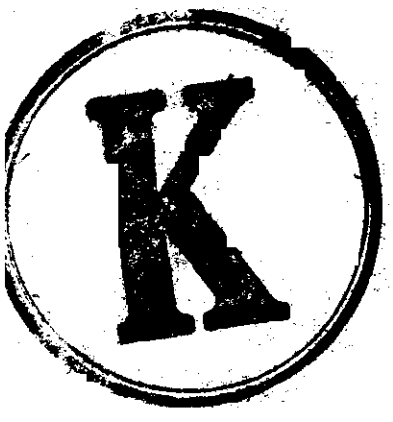

1946 File No. O. Town Plan 46

Legal Deptt

A BRANCH

Subject:— Opinions under the Bombay Town Planning Act 1915

1/4/E

File No. O. Town Plan /46

Gen. 194 e.

346-A

Legal Department File No. G. Town Plan/46

Sr No.	R.I./	G-No-	Subject	pages
			Opinions under the Bombay Town Planning Act. 1915.	
1.	~~2287~~ 28-3-46		The Compensation Payable to the B.B.and C.I.Rly. can be assessed not under section 19 but under section 21	1
2-	~~5187~~ 23-7-46		Whether the man can remove, pull down altheren any building a part of building or remove any earthe stone or material alter the local authority has published a declaration under saluse(a) of section 18(1) of the B'bay Town planning Act 1915-	3
3-	~~5404~~ 15-8-46		Govt. sanctioned the Town Planning scheme No. II of Andheri with effect from 15-11-1919 and regulation 2 of the Regulation of that scheme prohibits the erection of two storyed buildings.	5

M.M.D.
~~15-6-46~~
C.C

The consulting Surveyor to Government does not agree agree with R.L.A.'s opinion No. 6415 dated 13rd September 1943 and observes as under:-

> "I am afraid the R.L.A's opinion that compensation payable for land proposed to be acquired for the scheme purposes falls under section 21 of the Town Planning Act is not correct. That section Deals with with the question of compensation for injurious affection to any property or right, which is quite different from compensation for the acquisition of of the land. In the former case land is not acquired and remains in possession of the owner and yet he receives compnsation for injurious affection to his property or right as the result of making the scheme while in the latter case the compensation is paid purely for land or building acquired outright from him. This latter type of compensation is provided for under section19 as stated in my previous note and the Arbitrator has quite rightly shown this amount in his award as falling under section 19.
>
> It will be observed from Form II on page 9 of the Rules made under section 52 of the Bombay Town Planning Act that the Amount of compensation or contribution under section 19 is entered in Column 19 and this figure is arrived at by deducting the value of the original plot in column 6(b) from undeveloped value of final plot in column 9(h). Where a whole plot is acquired and no final plot is allottted in lieu thereof, column9(b) will be blank and appear in column 11 as a minus figure indicating that it is a demand by the owner under section 19 or in the other words compensation under sec ion 19. A reference to the preliminary remarks on chapter III in the report of the Select Committee appearing on page 514 of Part VII of the Bombay Government Gazett dated the 18th May 1914 will make this point more clear."

The view now expressed by the Consulting Surveyor is not supported by the language of section 19 of the Bombay Town Planing Act, 1915. That section provides for the addition to or deduction from the contribution leviable from a person; and such addition to or deduction from the contribution is to be assessed on the basis of the amount by which the total value of the plots included in the final scheme will all the buildings and works thereon allotted to a person falls short of or exceeds the total

value of the original plots with all buildings and works thereon of such person. The three essent... elements of section 19 are:

(1) there should be plots included in the final scheme;

(2) these plots should have been alloted to persons holding original plots;

(3) there should be contribution leviable from such persons.

Apparently this section does not contemplate the acquisition of plots. In the case under consideration theB.B.& C.I.Railway lands are included in the scheme with a view to their being acquired and reserved for public purposes. The other two essentials namely the allotment of plots and the levy of contribution being absent, section 19 will have no application. The reliance on From A at p.9 of the Bombay Town Planning Rules is therefore misconceived.

The acquistion of plots for the purpose of a town planning scheme otherwise than by recourse to the Land Acquisition Act,1894 is contemplated by section 23 of the Bombay Town planning Act and the only provision whereunder the compensation payable to the the owner thereof can be assessed appears to be section 21- The injurious affection of any property in whole or in part under section 21 includes the acquisition thereof for the purpose of the town planning scheme. It appears therefore that the compensation pauable to the B.B.&Ci.I.Railway can be assessed not under section 19 but under section 21. In the circumstance the R.L.A. sees no reason to modify his previous opinion.

Id/-P.N.Moos.

Remembrancer of Legal Affairs.

U.R.to G,D. No. 3987,dated the 28th May 1946.

M.R.D
15-6-5
C4

Office of the R.L.A.

Clause (a) of setion 15(1) of the Bombay T Planning Act, 1915, provides that when a local authorit has published a declaration of intention to make a scheme no person shall within the area included in the scheme erect or proceed with any building or work or remove, pull down, alter any building or part of of a building or remove any earth, stone or material unless such person has applied for and obtained the necessary permission which shall be contained in a commencement certificate granted by the local authorit in the form prescribed. The underlined words were inserted by section 2(a) of the Bombay Town planning (Amendment Act. 1920. Clause(a)of section 15(1) as it stood when the Act was passed in 1915 prohibited the erection or proceeding with any building or work. consequently "work" has to be read ejusden generis with "building". Once a declaration of intention to make a scheme is made by a local authority the only restrictions that the Act imposes on the future development of land included in the scheme are those provided by Clause(a) of section 15(1). The proposal to lay out S.No.302 of Malegaon into suitable building plots in the present case prima facie does not involve the erection or proceeding with any building or work withi the meaning of clause(a)of section 15(1). The owner of S.No. 303, it appears, is also prepared to abide by the plan to be prepared by the Consulting Surveyor to Govt. In the circumstance there appear no legal objection to the preparation of a lay out of S.No. 303 of Malegaon though it is included in the proposed Town-planning scheme, Malegaon.

Sd-/R.N.Moos

Remembrancer of Legal Affairs.

U.R.to G.L.No. 5162 dated the 23rd July 1945.

M.R.P.
15-6-56.
C.4

Office of the E&L.A.

It appears that by Government Notification (P.C.D) No. 8387 dated 7th October 1919 Government sanctioned the Town Planning scheme No II. of Andheri with effect from 15 th November 1919; and regulation 2 of the Regulations of that Scheme prohibits the erection of two storeyed buildings. The Parle-Andheri Municipality has taken steps to very the scheme to allow the construction of two storeyed buildings. pending the variation of the Scheme Mr. K.M. Munshi requests Government to accord provisional sanction to the Bharatiya Vidy Bhuvan to build a second floor on its property. The E&L.A. is requested to advise whether it is possible to comply with the request of Mr. K.M. Munshi.

The Bombay Town-Planning Act, 1915 contains no provison empowering Government to accord any provisional sanction to the variation of any town-planning scheme. The construction of a two storeyed building would involve the breach of regulation 2 of the Regulations of the Town Planning scheme II of Andheri obedience to which can be enforced under section 43 of the Bombay Town-planning Act. 1915. Consequently is would not be legally feasible to comply with the request of Mr. K.M. Munshi.

Sd-/18-9-40

Remembrancer of Legal Affairs.

U.R.tp G.D. No. 6404 dated the 19th September 1946.

M.R.D.
15-6-56
C.4